

E.) REMARKS/ARGUMENTS

This response is filed in response to the Office Action dated March 9, 2004.

Upon entry of this Response, claims 1-20 will be pending in the Application.

In the outstanding Office Action, the Examiner rejected claims 1-19 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards at the invention, rejected claims 1-5 and 18 under 35 U.S.C. 102 (a) as being anticipated by Kalein (U.S. Patent Application Publication No. 2003/0114073); rejected claims 1, 2, 6-11, 14-17, and 19 under 35 U.S.C. 102(b) as being anticipated by Richardson (U.S. Patent No. 5,830,036); and rejected claims 1, 2, 9-13, 15 and 19 under 35 U.S.C. 102(b) as being anticipated by Fleener (U.S. Patent No. 2,511,403).

Rejection under 35 U.S.C. 102

The Examiner rejected claims 1-5 and 18 under 35 U.S.C. 102(a) as being anticipated by Kaelin (U.S. Patent Application No. 2003/0114073), hereinafter referred to as "Kaelin"

Specifically, the Examiner stated that

Kaelin discloses a wild game call (1) comprising: a box (3) having a base (15) attached to substantially vertical sidewalls (13, 14, 16, 17), the sidewalls forming an opening (see fig. 1); a striking plate (2) comprising at least one friction material (see paragraph [0013]) and having a main body (9) which forms the top of the box, the striking plate having a top striking surface (10), the main body is substantially coextensive with the sidewalls (see fig. 2), and a protruding portion having a top surface and a bottom surface, which is adjacent to, and which extends over and beyond, the opening (see fig. 2); the bottom surface of the protruding portion is a striking surface (see fig. 2, and respective portions of the specification); the thickness of the striking plate varies over the length of the plate (see fig. 2); the thickest portion of the striking plate is adjacent the sidewall opening (see figs. 1, 2); the thickness of the protruding portion of the striking plate narrows gradually to

form a thin unsecured end (see fig. 2); and an aperture (19) is present within a sidewall (see figs. 1, 2).

Applicants respectfully traverse the rejection of claims 1-5 and 18 under 35 U.S.C. 102(a).

Kaelin, as understood, is directed to a single hand actuated friction type box call that consists of three principal components, a generally rectangular wooden box, a longitudinally double convex bottom striker lid and a return mechanism. A generally rectangular, elongated hollow wooden sound chamber box is up by the assembly of a horizontal base, a front and back wall and a pair of opposed end blocks place one at each end of the base and between each sidewall. A handle-less double convex bottom striker lid, with a thumb slide tab attached to its' top side, is hinged to one end block of the sound box to provide an axis point for movement of the striker lid. The return mechanism serves a dual purpose of holding the striker lid in an open position and holding the striker lid against the top of the elongated, convex-topped back wall. A looped stretchable band may be connected through the eyelet then threaded through the drilled hole in the back wall and then wrapped around the end of the sound chamber end block. The band is then held in place in one of the three variable tension connectors that may be notched into the side of the base on the opposite end from the pivot screw and on the opposite side from the hole drilled in the side back wall. The call can be easily actuated by holding the call on its side in the palm of the hand and resting the thumb on the top of the striker lid and against the slide thumb tab then squeezing the lid shut. The call is now actuated with just the movement of the thumb and cut down on excess movement. The tension from the looped, stretchable band returns the lid to the open position plus it sets the correct tension between the striker lids against the sound chamber box wall. There is no protruding handle extending out past the body of the call.

In contrast, independent claim 1, as amended, recites a wild game call comprising a box having a base attached to substantially vertical sidewalls, the sidewalls forming an opening and a striking plate. The striking plate comprises at least one friction material and has a main body operatively connected to the box to form a top of the box. The at least one friction material is disposed on a top striking surface of the striking plate. The top striking surface is configured to be used with a striker. The main body is substantially coextensive with the sidewalls and comprises a protruding portion which is disposed adjacent to the opening and is configured to extend over and beyond the opening. Support for the amendments to claim 1 may be found in Paragraphs [0006] and [0044] and Applicant submits that no new matter has been added as a result of these amendments.

The following principles apply to Section 102 rejections. The Manual of Patent Examining Procedure (“MPEP”) §2131 provides: “A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. The identical invention must be shown in as complete detail as is contained in the ... claim. The elements must be arranged as required by the claim...” [citations omitted] This is in accord with the decisions of the courts. Anticipation under section 102 requires “the presence in a single prior art disclosure of all elements of a claimed invention arranged as in that claim.” Carella v. Starlight Archery, 231 USPQ 644, 646 (Fed. Cir., 1986), quoting Panduit Corporation v. Dennison Manufacturing Corp., 227 USPQ 337, 350 (Fed. Cir., 1985).

Thus, identifying a single element of the claim, which is not disclosed in the reference, is sufficient to overcome a Section 102 rejection.

At least one of the features recited by Applicant in independent claim 1 is not taught or suggested by Kaelin. Kaelin does not teach or suggest “the at least one friction material

being disposed on a top striking surface of the striking plate” or “the top striking surface being configured to be used with a striker” as recited by Applicant in independent claim 1. Rather, Kaelin teaches that the call is actuated by “squeezing the lid shut,” (para. [0008], lines 29-32) which necessarily means that the bottom, not the top, of the striker lid of the box is what serves as the friction material and is what comes into contact with the box. Kaelin expressly calls out reference 10 as the “bottom side” of the striker lid (para. [0013], lines 3-7). In addition, Kaelin does not teach that the striker lid is to be with a separate striker. Rather, as set forth previously in this paragraph, Kaelin teaches that grooved plastic sheet is to be actuated by squeezing the lid of the box. Thus, since Kaelin does not teach or suggest all of the limitations recited in independent claim 1, Applicant respectfully submits that Kaelin does not anticipate Applicant's invention as recited in independent claim 1.

Therefore, for the reasons given above, independent claim 1 is believed to be distinguishable from Kaelin and therefore are not anticipated nor rendered obvious by Kaelin.

Dependent claims 2-5 and 18 are believed to be allowable as depending from what is believed to be an allowable independent claim 1 for the reasons given above.

In conclusion, it is respectfully submitted that claims 1-5 and 18 are not anticipated by Kaelin and are therefore allowable. Applicants ask that the Examiner reconsider and withdraw this ground of rejection.

Rejection under 35 U.S.C. 102

The Examiner rejected claims 1, 2, 6-11, 14-17, and 19 under 35 U.S.C. 102(b) as being anticipated by Richardson (U.S. Patent No. 5,830,036), hereinafter referred to as “Richardson”

Specifically, the Examiner stated that

Richardson disclose a wild game call comprising “a box (12) having a base

attached to substantially vertical sidewalls (see figs. 1-4), the sidewalls forming an opening (see figs. 1, 3, 4); a striking plate (10) comprising at least one friction material (see column 8, lines 42-51) and having a main body (22) which forms the top of the box, the striking plate having a top striking surface (16), the main body is substantially coextensive with the sidewalls (see figs. 1, 2), and a protruding portion having a top surface and a bottom surface which is adjacent to , and which extends over and beyond, the opening (see figs. 1, 2); the bottom surface of the protruding portion is a striking surface (see figs. 1-6, and respective portions of the specification); the striking surface is comprised of a plurality of friction materials (see column 8, lines 42-51); the plurality of friction materials are arranged such that one friction material provides the entire top striking surface; and the plurality of friction materials are arranged such that each friction material provides at least a portion of the top striking surface (see figs. 1-6, and respective portions of the specification); the striking plate is further comprised of at least one hollow or semi-hollow structure (18) which extends along at least a portion of the length of the striking plate (see figs. 7-9); the at least one structure comprises at least one groove (28c) in the bottom surface of the striking plate (see figs. 3, 6); the shape of the at least one groove is selected from the group consisting of: rectangular, v-shaped, and rounded (see figs. 3, 6); the at least one channel is entirely enclosed within the striking plate (see figs. 1-6); the at least one channel is comprised of at least one open end (see fig. 6); the plurality of friction materials are arranged such that one friction material provides the entire striking bottom striking surface; and the plurality of friction materials are arranged such that each friction material provides at least a portion of the bottom striking surface (see figs. 1-6, and respective portions of the specification); a material selected from the group consisting of galvanized steel, sand, weather resistant thermoplastic, and combinations thereof is embedded in the striking plate (see column 8, lines 42-51).

Applicants respectfully traverse the rejection of claims 1, 2, 6-11, 14-17, and 19 under 35 U.S.C. 102(b).

Richardson, as understood, is directed to a chambered striker wildlife call assembly for generating wildlife sounds. The invention is provided with a striker member subassembly having first and second end-portions and top and bottom sections affixed to and adjoining one another. The first end portion and the bottom section of the striker subassembly are provided with a sound chamber channel which is covered by the

attached and adjoining top section of the striker subassembly. The first end-portion of the striker subassembly is provided with an elongate pivot hinge channel. Additionally the striker subassembly is provided with an upper hinge support member having a channel generally congruent to that of the elongate pivot hinge channel of the striker. The invention is designed to work in combination with a lower box subassembly, which can be any of a number of available box-type turkey or wildlife lower box assemblies, having an open sound chamber with a first pair of opposing side walls and a second pair of opposing side walls, with each of the second pair of opposing side wall having an upper widthwise surface having a range of points of accessible contact and a middle portion-oriented strike point where a mid-range of preferred sound is produced upon friction-type contact. Additionally, the first end of the lower box subassembly is provided with a hinge coupling space for receipt and installation, allowing pivotal and slideable movement, of the striker subassembly of the invention. The call assembly is further provided with a coupling hinge means subassembly for pivotably and slideably attaching the striker subassembly of the invention to the lower box subassembly. This coupling hinge means subassembly extends through and retains the channel of the upper hinge support member of the striker, the elongate pivot hinge channel of the striker and the hinge coupling space of the lower box subassembly so that the bottom section of the striker can make optionable, friction-like and releasable contact with either of the second pair of opposing side walls of the lower box subassembly at a variable location along the range of points of accessible contact and the strike point on the upper widthwise surface of either of the second pair of opposing side walls of the lower box subassembly to generate a variable range of wildlife sounds.

In contrast, independent claim 1, as amended, recites a wild game call comprising a box having a base attached to substantially vertical sidewalls, the sidewalls forming an opening and a striking plate. The striking plate comprises at least one

friction material and has a main body operatively connected to the box to form a top of the box. The at least one friction material is disposed on a top striking surface of the striking plate. The top striking surface is configured to be used with a striker. The main body is substantially coextensive with the sidewalls and comprises a protruding portion which is disposed adjacent to the opening and is configured to extend over and beyond the opening.

At least one of the features recited by Applicant in currently independent claim 1 is not taught or suggested by Richardson. Richardson does not teach or suggest “the at least one friction material being disposed on a top striking surface of the striking plate” or “the top striking surface being configured to be used with a striker” as recited by Applicants in independent claim 1. Rather, Richardson teaches that the striker paddle is to be used in conjunction with a lower box subassembly of a box-type call. (col. 7, lines 32-34). As is well-known in the art, when striker paddles are used in conjunction with the lower box subassembly, the bottom of the striker paddle, not the top, serves as the friction material. As described clearly in Richardson, “operable points and portions of the curved or arcuate surface 76e of the bottom paddle section 75 of the striker subassembly 72 can be brought to make friction-like contact with a preferred or preselected choice of the range of points of accessible contact provided along each of the widthwise surfaces, 88a and/or 88b.” (col. 12, lines 23-29) This configuration is clearly illustrated in several figures in Richardson, including, but not limited to, Fig. 28, Fig. 29, and Fig. 32. In addition, Richardson does not teach that the striker paddle is configured to be used with a separate striker. Rather, as set forth above, Richardson teaches that grooved plastic sheet is to be used in conjunction with a lower box subassembly. Thus, since Richardson does not teach or suggest all of the limitations recited in independent claim 1, Applicant respectfully submits that Richardson does not anticipate Applicant's invention as recited in independent claim 1.

Therefore, for the reasons given above, independent claim 1 is believed to be distinguishable from Richardson and therefore is not anticipated nor rendered obvious by Richardson.

Dependent claims 2, 6-11, 14-17, and 19 are believed to be allowable as depending from what are believed to be allowable independent claim 1 for the reasons given above.

In conclusion, it is respectfully submitted that claims 1, 2, 6-11, 14-17, and 19 are not anticipated by Richardson and are therefore allowable. Applicants ask that the Examiner reconsider and withdraw this ground of rejection.

Rejection under 35 U.S.C. 102

The Examiner rejected claims 1-5 and 18 under 35 U.S.C. 102(b) as being anticipated by Fleener (U.S. Patent No. 2,511,403), hereinafter referred to as "Fleener"

Specifically, the Examiner stated that

Fleener discloses a wild game call comprising: a box having a base (2) attached to substantially vertical sidewalls (4, 6, 8, 10), the sidewalls forming an opening (see fig. 1); a striking plate (14) comprising at least one friction material (24) and having a main body which forms the top of the box (see figs. 1-5), the striking plate having a top striking surface (see figs. 1, 2), the main body is substantially coextensive with the sidewalls (See figs. 1-5), and a protruding portion (20) having a top surface and a bottom surface which is adjacent to, and which extends over and beyond, the opening (see fig. 2); the striking plate is further comprised of at least one hollow or semi-hollow structure (grooves/serrations within plastic sheet 24) which extends along at least a portion of the length of striking plate (See figs. 2, 4, 6); the at least one structure comprises at least one groove in the bottom surface of the striking plate (see figs. 4, 6); the shape of the at least one groove is selected from the group consisting of: rectangular, v-shaped, and rounded (the grooves are v-shaped); the at least one structure is comprised of channels in the striking plate (see figs. 4, 6); the shape of the at least one channel is selected from the group consisting of: triangular prism, rectangular prism, and cylinder (see fig. 6); the at least one channel is comprised of at least one open end (see figs. 4, 6); a material selected from the group consisting of galvanized steel, sand, weather resistant thermoplastic, and combinations thereof is embedded in the

striking plate (see column 2, lines 1-14).

Applicants respectfully traverse the rejection of claims 1, 2, 9-13, 15 and 19 under 35 U.S.C. 102(b).

Fleener, as understood, is directed to a goose call comprising a wooden box having a base, end walls, and rearwardly tapering sidewalls, the sidewalls being beveled along their upper edges. A cover, with a reduced grip, is loosely secured by a screw to the end wall. A diagonally grooved plastic sheet is under the face of the cover. To cause the goose call sound to be made, the bottom of the cover is drawn along either beveled edge.

In contrast, independent claim 1, as amended, recites a wild game call wild game call comprising a box having a base attached to substantially vertical sidewalls, the sidewalls forming an opening and a striking plate. The striking plate comprises at least one friction material and has a main body operatively connected to the box to form a top of the box. The at least one friction material is disposed on a top striking surface of the striking plate. The top striking surface is configured to be used with a striker. The main body is substantially coextensive with the sidewalls and comprises a protruding portion which is disposed adjacent to the opening and is configured to extend over and beyond the opening.

At least one of the features recited by Applicant in independent claim 1 is not taught or suggested by Fleener. Fleener does not teach or suggest “the at least one friction material being disposed on a top striking surface of the striking plate” or “the top striking surface being configured to be used with a striker” as recited by Applicants in independent claim 1. Rather, Fleener teaches that the grooved plastic sheet is present on the bottom, not the top, of the cover of the box (col. 2, lines 1-2). In addition, Fleener does not teach that the grooved plastic sheet is configured to be used with a separate striker. Rather, Fleener

teaches that grooved plastic sheet is to be used in conjunction with the beveled edges of the box (col. 2, lines 4-7). Thus, since Fleener does not teach or suggest all of the limitations recited in independent claim 1, Applicant respectfully submits that Fleener does not anticipate Applicant's invention as recited in independent claim 1.

Therefore, for the reasons given above, independent claim 1 is believed to be distinguishable from Fleener and therefore is not anticipated nor rendered obvious by Fleener.

Dependent claims 2, 9-13, 15 and 19 are believed to be allowable as depending from what is believed to be an allowable independent claim 1 for the reasons given above.

In conclusion, it is respectfully submitted that claims 1, 2, 9-13, 15 and 19 are not anticipated by Fleener and are therefore allowable. Applicants ask that the Examiner reconsider and withdraw this ground of rejection.

Rejection under 35 U.S.C. 112

The Examiner rejected claims 1-19 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter applicant regards as the invention.

Applicant respectfully traverses the rejection of claims 1-19 under 35 U.S.C. 112, second paragraph.

The Examiner stated that in claim 1, the language "the top" in line 5 lacked proper antecedent basis. In response thereto, Applicant has amended claim 1 in a manner that is believed to overcome the Examiner's rejection.

The Examiner stated that in claim 3, the language "the thickness" and "the length" in lines 1 and 2 lacked proper antecedent basis. In response thereto, Applicant has amended claim 3 in a manner that is believed to overcome the Examiner's rejection.

The Examiner stated that in claim 4, the language "the thickness portion " and "the sidewall opening" in lines 1 and 2 lacked proper antecedent basis. In response thereto, Applicant has amended claim 4 in a manner that is believed to overcome the Examiner's rejection.

The Examiner stated that in claim 5, the language "the thickness" in line 1 lacked proper antecedent basis. In response thereto, Applicant has amended claim 5 in a manner that is believed to overcome the Examiner's rejection.

The Examiner stated that in claim 7, the language "the entire top striking surface" in line 2 lacked proper antecedent basis. In response thereto, Applicant has amended claim 7 in a manner that is believed to overcome the Examiner's rejection.

The Examiner stated that in claim 9, the language "the length" in line 2 lacked proper antecedent basis. In response thereto, Applicant has amended claim 9 in a manner that is believed to overcome the Examiner's rejection.

The Examiner stated that in claim 11, the language "the shape" in line 1 lacked proper antecedent basis. In response thereto, Applicant has amended claim 11 in a manner that is believed to overcome the Examiner's rejection.

The Examiner stated that in claim 13, the language "the shape" and "the at least one channel" in line 1 lacked proper antecedent basis. In response thereto, Applicant has amended claim 13 in a manner that is believed to overcome the Examiner's rejection.

The Examiner stated that in claims 14 and 15, the language "the at least one channel" in line 1 lacked proper antecedent basis. In response thereto, Applicant has amended claims 14 and 15 in a manner that is believed to overcome the Examiner's rejection.

The Examiner stated that in claim 16, the language "the entire bottom striking surface" in line 2 lacked proper antecedent basis. In response thereto, Applicant has

amended claim 2, from which claim 16 depends, and claim 16, in a manner that is believed to overcome the Examiner's rejection.

The Examiner stated that in claim 17, the language "the bottom striking surface" in line 2 lacked proper antecedent basis. In response thereto, Applicant has amended claim 2, from which claim 17 depends, in a manner that is believed to overcome the Examiner's rejection.

Therefore, in view of the above, Applicant submits that claims 1-19 are not indefinite and comply with the provisions of 35 U.S.C. 112, second paragraph, and therefore are allowable.

Claim Amendments

Applicant has amended claim 12. As support for this amendment may be found in paragraph [0052], Applicant submits that no new matter has been added as a result of this amendment.

Applicant has amended claim 6, claim 10, claim 17, and claim 18 to alter the grammatical construction of the claims. Applicant submits that no new matter has been added as a result of these amendments.

Newly Added Claim

Applicants have also included new claim 20. As support for this claim can be found in original claim 1, Paragraphs [0006] and [0044], and FIG. 1, Applicant submits that no new matter has been added as a result of the new claim.

CONCLUSION

In view of the above, Applicant respectfully requests withdrawal of the outstanding rejections. As a result of the amendments and remarks presented herein, Applicant respectfully submits that claims 1-20 not anticipated or rendered obvious by Kalein, Richardson and/or Fleener and thus are in condition for allowance. As the claims are not anticipated in view of the applied art, Applicant requests allowance of claims 1-20 in a timely manner. Applicant submits that no new matter has been added by the amendments to the claims or by the addition of new claims. If the Examiner believes that prosecution of this Application could be expedited by a telephone conference, the Examiner is encouraged to contact the Applicant.

Attorney Docket No. 21311-0001
Application No. 10/668,471

The Commissioner is hereby authorized to charge any additional fees and credit any overpayments to Deposit Account No. 50-1059.

Respectfully submitted,
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